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SINCE 1855

March 12, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

RE: Docket Number R-1176

Dear Ms. Johnson:

This is the response of Dollar **Bank**, FSB (the "Bank") to the proposed rule issued by the Board of Governors of the Federal Reserve System (the "Federal Reserve") implementing the recently enacted Check-Clearing **Act** for the 21st Century (the "Check 21 Act.")

The Bank is sympathetic to the problems faced by the Federal Reserve in issuing a timely regulation on such a major change in national payment practices. **Any** defects in such a regulation may harm consumers, businesses, or banks or all of them and may undercut the public policies that the **Check 21 Act** is intended to promote.

In general, the Bank believes that the Federal Reserve should draft the final rule using the same vocabulary as is used in Articles 3 and 4 of the Uniform Commercial Code (the "UCC.") The reason is that there is a huge body of case law based on the UCC and predecessor statutes such as the Negotiable Instruments Law. Use of language that differs from that in the UCC invites litigation, expense, and uncertainty, all of which will discourage adoption of the check truncation that the **Check 21 Act** is intended to encourage. The Bank understands that the provisions of the **Check 21 Act** and the **Expedited Funds Availability Act** supersede any contrary provisions in the UCC, but suspects that the various acts may differ in language even when the provisions are consistent. The Federal Reserve has decades of experience in the check collection process and full authority to write regulations to "facilitate compliance" with the **Check 21 Act**. Consequently, the **Bank** believes that only the Federal Reserve has the capacity to identify explicitly and to redefine appropriately any terms used in the UCC that the **Check 21 Act** requires to be redefined. By undertaking this task and then writing a regulation with a vocabulary fully consistent with the UCC (as redefined), the Federal Reserve will greatly reduce the potential for unnecessary and wasteful litigation and substantially foster adoption of check truncation as intended by the **Check 21 Act**.

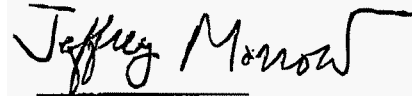
The Federal Reserve specifically asked for comment on whether using information from a check to create an ACH debit entry should be covered under the Check 21 Act. The Bank recommends that truncation of a check be covered under both the Check 21 Act and Regulation E unless the truncating bank forwards with the request for payment sufficient data to permit creation of a substitute check, in which case the Check 21 Act would apply, but not Regulation E. The plain language of the Check 21 Act says that "truncate" means to "remove an original paper check from the check collection process." That clearly covers ACH debits involving the conversion of a check. If what the truncating bank forwards is a mere electronic transaction that is not immediately convertible into a substitute check, which is the only legal equivalent of a check under the Check 21 Act, then the transaction is also an electronic transaction covered under Regulation E. Method of delivery, however, is not the issue under the Check 21 Act. If what is presented electronically can create a substitute check, then the clear intent of the Check 21 Act is to treat the item as though it were the original check and not an electronic item.

The Federal Reserve also specifically asked for comment on "demand drafts." In general, the Bank shares the Federal Reserve's concern about "demand drafts." In practice, paying banks cannot identify such items, but lose the right to return them under the "midnight deadline rule" because the depositor has no opportunity to protest them on a timely basis. Thus, "demand drafts" are peculiarly subject to abuse and fraud against consumers and paying banks. Despite agreement that "demand drafts" present a legitimate issue calling for regulation to protect the public, the Bank is concerned that the term "handwritten" in the proposed language is likely to create severe and unanticipated problems with the use of facsimile signatures, a long-established practice that has not given rise to substantial fraud. Moreover, technology relating to electronic signatures is continually improving and should not be subjected to legal impediment. Therefore, the Bank recommends that any regulation adopted by the Federal Reserve on "demand drafts" exclude the word "handwritten."

Finally, the Bank recommends that the Federal Reserve incorporate an improvement into the regulatory requirements for notification of return of checks. The Federal Reserve has ample authority under the Expedited Funds Availability Act to promote improved notification of returns for any amount. The Check 21 Act itself does not provide a benefit to consumers in improved availability. To the extent that banks adopt electronic presentment, they can effectively present nationally on the same terms that they present locally today. But the notice of return currently required by Regulation CC occurs late in the day and is for amounts that far exceed the average consumer deposit. Thus, adopting banks will have no incentive to improve availability for their depositors. The Bank recommends that, as part of the implementing regulation for the Check 21 Act, notice of return should be required back to the original bank of deposit by opening of business on the day after presentment to the paying bank for all checks in excess of \$100.

The **Bank** appreciates this opportunity to respond to the request for comment from the Federal Reserve. If you have **any** questions **about** these comments, **please** feel free to call either me at (412) 261-8146 or **Edward G. Brown, Esq.**, at (412) 261-7554,

Respectfully yours,

A handwritten signature in black ink that reads "Jeffrey Morrow". The signature is written in a cursive style with a long horizontal flourish at the end.

Jeffrey Morrow